

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 4 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?No

2. To be referred to the Reporter or not?
No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
No

5. Whether it is to be circulated to the Civil Judge?
No

HEMANT KIROLIKAR

DY. MANAGAR(SALES)

Versus

Appearance:

MR KB ANANDJIWALA for Petitioners
Mr. K.P. Rawal, APP, for Respondent No. 1
MR J.P. Makwana (Respondent No. 2) party-in-person

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/04/98

ORAL JUDGEMENT

The learned advocate for the petitioners seeks permission to withdraw the petition with regard to petitioner No.1, Hemant Kirlolikar, to which Mr.J.P. Makwana, who appears party in person, has seriously objected.

The learned advocate for the petitioners submits that, as there was no stay of investigation with regard to petitioner No.1, the investigating agency is likely to submit report before the trial court. Hence, he does not press the present petition qua petitioner No.1.

In view of the facts and circumstances of the case, the permission to withdraw the present petition qua petitioner no.1 is granted. The petition stands rejected with regard to petitioner No.1.

The petitioners have filed this Special Criminal Application under Article 226 of the Constitution of India, read with Section 438 of the Code of Criminal Procedure ('Code' for short) for the following reliefs:

- "(i) That the Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to quash the complaint registered at C.R. No.I.99/97, at Pradyumnanagar Police Station, Rajkot, and to release the petitioners on anticipatory bail in the event of their arrest in connection with the C.R. No.II.99/97;
- (ii) That pending the hearing and disposal of this petition, interim relief be granted;"

As per the averments made in the application, the petitioners are highly placed officers in the Bharat Petroleum Corporation Limited ("BPCL" for short). Respondent No.2, Jagdishbhai Pababhai Makwana, is serving in BPCL as Senior Engineering Officer, at Rajkot Division. Respondent No.2 sent an application dated December 11, 1997 to the Commissioner of Police, Rajkot,

alleging that the petitioners had committed offence under Section 3(I)(viii)(ix) and (x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocity) Act, 1989 ('Act' for short), read with Sections 506(2), 504, 120-B, 114, 34 of Indian Penal Code. On receipt of the application, the Commissioner of Police, Rajkot, sent the said application for investigation to Police Inspector, Pradyumnanagar Police Station, Rajkot City, which came to be registered as C.R. No.II-99 of 1997 against the petitioners for the offences stated above.

Respondent No.2, in his complaint-cum-letter addressed to the Commissioner of Police, Rajkot, has alleged that, as he belongs to Scheduled Caste, he was harassed by the petitioners while he was serving with the BPCL at several places. Respondent No.2, prior to filing of the complaint, was serving in BPCL at Kandla, as Senior Engineering Officer from February 4, 1991 to October 17, 1994. It is alleged that the petitioners had hatched a criminal conspiracy and in furtherance of that conspiracy are trying to harass respondent No.2 by not providing sufficient facilities and to spoil his career had made adverse remarks. It is also alleged that the petitioners had not assigned him sufficient work so that he could show his mettle in the Corporation. It is, thus, alleged that, because of animosity shown by the petitioners, respondent No.2 had to suffer mental agony. It is also alleged in the complaint that, when respondent No.2 brought to the attention of the officers, who are working at Kandla, that some tankers which were carrying diesel and petrol, were previously used for transportation of palmolive, which had caused adulteration to the supply of petrol and diesel in tankers. It is alleged that, when this illegality was brought to the notice of accused No.7, he simply threw away the letter which was written by respondent No.2. It is also alleged in the complaint that at Gandhidham, he was provided with residential facilities in a flat by the BPCL but he was deprived of so many facilities in the said flat.

It is further alleged that the petitioners had caused undue harassment to respondent No.2 by not providing him railway tickets and advance for going to native place at the time of obsequiel ceremonies and illness of the family members, etc. It is also alleged in the complaint that on October 30, 1997, the petitioners, in furtherance of their conspiracy, have tried to kill respondent No.2 with the help of one oil tanker. Respondent No.2 sustained injuries in a vehicular accident which had taken place at Kandla

Installation of BPCL. It is alleged that the original accused Nos. 4, 2, 3, 5, 7 and 6 were responsible for that vehicular accident. It is further alleged in the complaint that, in May/June 1991, when respondent No.2 was serving at Kandla, his leave application was rejected and he was treated on leave without pay, and this attitude of the petitioners had also caused him financial loss. It is also alleged by respondent No.2 that the petitioners had caused mental torture. The petitioners had deducted from his salary various amounts such as house rent allowance, share loan contribution, excess amount of electricity charges of Gandhidam-Kandla flat, without assigning reasons. It is also alleged that respondent No.2, by his letter dated June 6, 1992, drawn attention of Chairman and Managing Director of the BPCL. Petitioner No.3, by his letter dated July 18, 1994, had given evasive reply. It is also alleged in the complaint that respondent No.2 is senior engineering officer of the Corporation, but, in spite of that fact, he has not been assigned proper work befitting to his status in the Corporation. It is also alleged that, by letter dated May 7, 1997, he had drawn the attention of the Chief Divisional Manager, Rajkot, that he was not entrusted the work. It is further alleged by respondent No.2 that at Kandla Installation, he was senior-most engineering officer, but, in spite of that, original accused No.6, Mr. D'souza had assigned the job of filing newspapers cuttings. Such assignment of work has lowered the image of respondent No.2 before other employees in the Corporation.

It is further alleged by respondent No.2 that he was not granted increments since last five years whereas other employees were given benefit of increment. Respondent No.2 has also made grievance that because he is having allergy of dust, he has to put on coloured glasses, and, when he applied for reimbursement, accused Nos. 3 and 4 have turned down his request for reimbursement of coloured glasses. It is further alleged that in the month of March/April 1995, all the employees of the BPCL were given 'safety award', whereas the respondent No.2 was deprived of such award. It is also the grievance of respondent No.2 that he was not given cable connection and installation charges by the BPCL, whereas other employees, who are similarly situated, were given benefit of cable and installation charges and monthly charges of cable connection. It is also the grievance of respondent No.2 that the officers who are juniors to him were given regular promotion and he was not promoted deliberately which has also caused mental torture and financial loss. In this connection, it is

alleged that petitioner No.4 (original accused No.5) had made adverse remarks in the confidential report to the effect that respondent No.2 should not be given promotion for ten years. It is also alleged in the complaint that original accused Nos. 1 and 7, knowing fully well that respondent No.2 belongs to Scheduled Caste, have tried to cause mental torture, so that he can leave the employment. It is also alleged in the complaint that the petitioners in connivance with each other are trying to harass respondent No.2 so that he can leave the job.

The learned advocate for petitioners Nos. 2 to 5 has submitted that the complaint, which is lodged by respondent No.2 before the Commissioner of Police, Rajkot, does not show the ingredients of offences which are alleged against the petitioners. It is submitted that the complaint, which is lodged by respondent No.2, relates to some incidents which had taken place at Kandla and, therefore, the Rajkot Police had no jurisdiction to investigate the same. It is further submitted by the learned advocate for petitioners Nos. 2 to 5 that the grievances and allegations made against the petitioners and other accused were in relation to service matters which do not, prima facie, establish commission of any offence as alleged in the complaint. It is further submitted by the learned advocate for petitioners Nos. 2 to 5 that some of the employees of the BPCL at Rajkot, who are also belonging to Scheduled Caste, had also given application that respondent No.2 was threatening them that he will file complaints against them under the Act. It is, therefore, submitted by the learned advocate for petitioners Nos. 2 to 5 that, as none of the ingredients of offences alleged in the complaint is established, the complaint requires to be quashed.

Respondent No.2 had previously engaged learned advocate Mr. A.N.Patel to plead his case in the present proceedings. But, thereafter, during the course of hearing, respondent No.2 by his affidavit dated March 16, 1998 relieved learned advocate Mr. A.N. Patel as his advocate in this case. Thereafter, respondent No.2 has argued his case as party-in-person and he is heard at length. The party-in-person has referred to several documents which are annexed with the complaint.

It is submitted by respondent No.2 that he was constantly tortured and harassed by petitioners Nos. 2 to 5, while he was serving at Kandla, Rajkot and other places, with the oblique motive that his image should be lowered down, as he belongs to Scheduled Caste. It is submitted that respondent No.2 had drawn the attention of

the Chairman and Managing Director of the Corporation with regard to harassment and mal-treatment meted out to him by the officers. But, the Chairman and Managing Director had paid no heed to his request and the mental torture and agony has been continued. The party-in-person has taken me to the averments made in the complaint elaborately and the documents annexed to the complaint.

The instances, which had taken place at Kandla, which have also been narrated in the complaint, had taken place from February 4, 1991 to October 17, 1994 while respondent No.2 was serving as Senior Engineering Officer at Kandla-Gandhidham. In my view, respondent No.2 cannot file complaint at Rajkot for the instances which had taken place at Kandla-Gandhidham. The grievance made by the respondent No.2 in the complaint more or less relates to discrimination meted out to him by the senior officers who have been arraigned as accused in the complaint. Adverse remarks in the confidential report made with mala fide intention, as alleged, will not attract commission of any offence under the Indian Penal Code. The grievances and allegations made by respondent No.2 in his complaint do not, prima facie, show ingredients of offences under the Act or under the provisions of Indian Penal Code. The complaint does not, prima facie, show that the petitioners Nos. 2 to 5 had intentionally insulted respondent No.2 thereby given provocation to any person intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any offence. The complaint does not establish ingredients of criminal intimidation as defined under Section 503 of the Indian Penal Code. It is alleged in the complaint that the petitioners with common intention or in furtherance of their conspiracy had tried to kill respondent No.2 while he was serving at Kandla. The alleged incident at Kandla had taken place on October 13, 1993, but respondent No.2 after lapse of four years had alleged that the petitioners had conspired to kill him with the help of one oil tanker. Moreover, the incident had taken place at Kandla in the year 1993, and, the complaint lodged in Rajkot will not be maintainable because of territorial jurisdiction. The grievance made by respondent No.2 with regard to not providing him more facilities in the flat by the BPCL and not granting of cable connection and installation charges, also pertains to service matter and, in my view, does not establish commission of any offence alleged in the complaint. The grievance made by respondent No.2 that from his basic salary, the petitioners had deducted various amounts illegally also relates to service matter and for which no

offence under any of the provisions of the Act can be said to have been made out.

Attention of this Court was drawn by the learned advocate for the petitioners Nos. 2 to 5 to the letter dated March 31, 1997, which is annexed with the present application. The signatories who are employees of the BPCL, Rajkot, had complained to the Senior Divisional Manager, Rajkot, as regards the misbehaviour and unwarranted interference of respondent No.2. The said letter reads as under:

"We would like to bring the following facts (Ref. discussion dated 18.3.1997) as regards to misbehaviour/unwarranted interference of Mr. Makwana:

- (1) Mr. Makwana always tries to exploit the other staff member of lower rank under pretext of his being Sr.E.O. and to take advantage of the opportunity.
- (2) Mr. Makwana always causes interference for other staff members while they are doing some important jobs.
- (3) Though his attendance is irregular, the moment he enters into office premises, in readiness to look at the paper lying in In-tray/Out-tray of the staff members and on refusal he creates problem and as he being local and influential person, we all apprehend that our lives are in danger and that he is capable of doing that also.
- (4) He always makes false allegations against staff members and his such act may spoil any employee's carrier.
- (5) Whenever he has an opportunity to insult/misbehave with the staff he abuses the concerned. An example of this is one day he threw away a brief of case of EO Mr. Manish Patny in front of many people.
- (6) He is habituated to pick up any letter of confidential nature and file and if refused to do so, threatens concerned staff of serious consequences under "Atrocity Act" and thus has created an atmosphere of fear and disturbance amongst staff members.
- (7) The staff who does not do his favour becomes victim of anger, abuses and allegations.
- (8) As referred in para-3 above, besides his irregular whenever he is in the office, found surrounded by his guests who talk loudly endangering office decency and discipline.
- (9) He misused office xerox machine and stationery.
- (10) Not only the above incidences, but he has left no staff members with whom he has no conflict so far. Every staff member on some or other pretext has

become victim of his misbehaviour.

As you are are aware, we all staff members in this Division are working together with integrity, unity ad fraternity and an act of Mr. Makwana as narrated above endangers to our healthy working environment.

Thus, such an act of Mr. Makwana has disturbed our mental peace which may in turn affect our day-to-day working and efficiency and also is harmful to the exemplary harmony/integrity amongst staff members.

We request you to initiate action against Mr. Makwana or to transfer him to some other place."

The learned advocate for petitioners Nos. 2 to 5 in this connection has submitted that even the members belonging to SC/ST are signatories to this letter saying that respondent No.2 was acting in highhanded manner. The learned advocate for petitioners Nos. 2 to 5 has also drawn the attention of this Court to the letter dated November 18, 1997, which was also addressed by the employees of BPCL, at Rajkot, to the Senior Divisional Manager, Rajkot. The said letter reads as under:

"This is further to our letter dated 11.11.1997 registering our protest against so-called warning/threatening to staff of criminal consequences, disturbing peaceful atmosphere and creating turmoil in office, sparing no staff being victimised for criminal consequences including atrocity on some or other grounds. Please note that the following staff members will be on "Mass Casual Leave" from 20.11.1997 onwards. This is in order to restore healthy atmosphere and maintain peace and harmony and feeling of unity, fraternity amongst the staff working in this Divisional Office. Every staff member in this office have been feeling insecure against such warning/threatening. Today, i.e., 18.11.1997 Shri Makwana has given dead line/ultimatum to see some of the staff members to face criminal consequences within 24 hours.

May we expect restoration of peace, harmony and healthy atmosphere of the Division as we used to enjoy earlier."

These two letters, in my view, show that respondent No.2 was acting in high-handed manner so as to cause trouble in the office of BPCL, at Rajkot.

Having examined the complaint, in the context and in the light of the fact-situation highlighted by the petitioners, this Court, prima facie, at the very outset,

raised some doubt about the complainant's story. The grievance and allegations made by the complainant are more or less relating to service matters. Some of the instances, for which the complaint is filed, took place at Kandla and, therefore, the Investigating Agency at Rajkot will have no jurisdiction to entertain the complaint. Once on reading the complaint, if it clearly appears to the Court that there are inherent improbabilities in the version as narrated by the complainant and the accused in all probabilities has been falsely framed up and made to victimise, then in that case it is the duty of the Court to save and protect accused from being unnecessarily humiliated and subjected to the agonies and inconvenience of trial. The extraordinary power of quashing the proceedings enshrined in Section 482 of the Code is undoubtedly required to be sparingly used but when ends of justice so imminently warrants that extraordinary inherent power of High Court becomes and accordingly enjoins extraordinary duty and obligation upon the Court to exercise the same without any feeling of hesitation. The complaint only makes out offence under Section 3(1)(viii)(ix)(x) of the Act against petitioner No.1, but the application qua petitioner No.1 has already been withdrawn and, therefore, I need not enter into the allegations made against petitioner No.1 in the complaint.

The complainant, being a member of the Scheduled Tribes, wanted to keep the whole staff on ban. He used to give threats to the superior officers of filing a false complaint against them under the Atrocity Act. Since March 1997, when it became unbearable for the staff members, superior officers to tolerate the misbehaviour and unwanted interferences by the complainant, Mr. Makwana, and frequent threats being given to them that he would file complaint under the Atrocity Act and he would spoil the career of the staff members, a representation duly signed by the officers including the members of S.C. & S.T. was sent to Chief Divisional Manager, BPCL, Rajkot, to take necessary action against Mr. Makwana or to transfer him to some other place. The letters produced on record show that the harassment and misbehaviour by the complainant had created turmoil in the office and no staff member was spared being victimized for criminal consequences including atrocity on some or other grounds. This would clearly show that the complainant wanted to take the whole staff on ban and, as the representation was made to go on Mass Casual Leave by intimation dated November 18, 1997, the complainant has lodged the present complaint before the police on December 11, 1997. Therefore, the present

complaint is with some mala fide intention and only with a view to harass the officers of the BPCL.

So far as petitioners Nos. 2 to 5 are concerned, there is not a whisper in the complaint that they had intentionally insulted or intimated with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. However, respondent No.2 has alleged that there was conspiracy and with common intention all have committed offences under Sections 3(1)(viii)(ix)(x) of the Act and also under Section 504 and 506(2) of the Indian Penal Code. Petitioners Nos. 2 to 5 are highly placed officers and, in my view, there is no prima facie case made out in the complaint against them that they had hatched a criminal conspiracy and with common intention had committed offences with other accused persons.

It is settled that High Court can exercise its power of judicial review in criminal matters. In the case of State of Haryana v. Bhajan Lal, reported in 1992 Supp (1) SCC 335, the Supreme Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under S.482 of the Code which it said could be exercised by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice. While laying down certain guidelines where the Court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the Courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (See: AIR 1998 Supreme Court 128: M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate).

In my view, as per the guidelines laid down by the Supreme Court in the case of Bhajan Lal (supra), allegations made in the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. Further, the complaint filed by respondent No.2 is manifestly attended with mala fide, and the same is malicious with an ulterior motive for wreaking vengeance

on the petitioners with a view to spite them due to private and personal grudge.

As a result of foregoing discussion, in my opinion, this is a rarest of rare case wherein interference of this Court, in exercise of its extraordinary powers under Article 226 of the Constitution and inherent powers under S.482 of the Code, is called for to quash the complaint filed by respondent No.2, to prevent abuse of process of court and to secure ends of justice. This Special Criminal Application qua petitioners Nos. 2 to 5 is, therefore, allowed. The complaint filed by respondent No.2 in Pradhymnanagar Police Station, Rajkot City, being C.R. No.II/99 of 1997, against petitioners Nos. 2 to 5 for the offences Section 3(I)(viii)(ix) and (x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocity) Act, 1989 read with Sections 506(2), 504, 120-B, 114, 34 of Indian Penal Code, is quashed and set aside. The prayer for anticipatory bail is rejected. Rule is made absolute to the extent indicated above.

(swamy)